IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11758 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

VADODARA MUNICIOPAL CORP. - Petitioner(s)
Versus
RAJESHBHAI CHANDULAL SOLANKI - Respondent(s)

==========

Appearance :
MR PRANAV G DESAI for Petitioner,
MR RD RAVAL for Respondent,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/09/2007

ORAL JUDGMENT

1. Heard Mr.Pranav G.Desai, learned counsel for the petitioner and Mr.R.D. Raval, learned counsel for the respondent.
2. The petitioner, being aggrieved by the award

dtd.26/9/2001 passed by the learned Labour Court (Main), Vadodara in Reference (LCV) No.1561 of 1998, is before this Court under Article 227 of the Constitution of India with a submission that the that the court below was wrong in holding that the workman had worked for 240 days in 12 calender months preceding the date of termination / retrenchment and further erred in directing reinstatement of the respondent workman with continuity of service and other benefits flowing from such continuity, less appreciating that the respondent workman was a daily wager and had not worked for 240 days.

3. Short facts necessary for disposal of the present writ application are that the respondent workman came to the Labour Court with a submission that he had worked for 240 days in total and as his removal was violative of Sec.25-F, and was also in violation of Sec.25-G and 25-H of the Industrial Disputes Act, 1947 ('the Act' for short), he was entitled to be reinstated.

4. The learned Labour Court, however, after recording the evidence and hearing the parties, came to the conclusion that the workman had worked for 240 or more days and as such he was entitled to reinstatement. The Court also

found that the juniors to the respondent workman were appointed / retained and in view of such act on the part of the petitioner Corporation, the respondent workman was entitled to be reinstated.

5. Mr.Desai, learned counsel for the petitioner submitted that the workman did not work for 240 days in 12 calender months preceding the date of termination / retrenchment, therefore, he is not entitled to any order of reinstatement. It was also submitted that there was no violation of sec.25-G or sec.25-H of the Act.

6. Mr.Raval, learned counsel for the respondent workman fairly submitted that the findings in relation to sec.25-F of the Act cannot be supported by the workman, because he has not worked for 240 days in 12 calender months preceding the date of termination / retrenchment. He, however, submitted that in view of violation of Sec.25-G and sec.25-H of the Act, the court below was justified in directing reinstatement of the workman.

7. In view of the concession made by the learned counsel for the respondent workman, it is not necessary for this Court to enter into the question of application of Sec.25-F of the Act. The question for consideration, however, would be that whether the provisions contained

under sec.25-G and sec.25-F of the Act were observed or not.

8. The Apex Court has repeatedly observed that the question of application of sec.25-F would be altogether different where a question of sec.25-G and sec.25-H of the Act and its application is raised.

9. Sec.25-G provides that the employer shall ordinarily retrench the workman who was the last person to be employed in that category unless for reasons to be recorded the employer retrenches any other workman.

Section 25-G can be summarised by saying that 'last come first go'

10. Section 25-H of the Act provides that where any workmen are retrenched and the employer proposes to take into his employment any person, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen who offer themselves for reemployment shall have preference over other person.

11.In the present case, present petitioner does not say that the procedure required under sec.25-G or sec.25-H of the Act was ever followed. The court below has recorded a clear finding that the persons who were juniors to the respondent workman were retained and certain persons were employed even after illegal removal of the respondent workman. If such a finding does not appear to be perverse, then, independent of sec.25-F, the workman would be entitled to relief under sec.25-G and sec.25-H of the Act. Taking into consideration the totality of the circumstances, reliefs granted by the learned court below deserves to and are accordingly modified in the following terms:-

(i) The present petitioner shall include the name of the respondent workman in a list of the daily wagers / temporary / ad-hoc appointees and shall provide work to the respondent workman in accordance with his seniority and in case any person junior to the respondent workman has been kept in continuous service, then, the respondent workman would be entitled to get the work in precedence over such person who is junior to the respondent workman

(ii) The relief of reinstatement, continuity of service and other benefits flowing from continuity of services would not be available to the respondent workman.

12. The petition is disposed of with the above referred modifications in the reliefs as granted by the learned court below. There shall be no order as to costs.

(R.S. GARG, J.)

rafik